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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. _____

ARCHIE PELTZMAN,

Petitioner,

v.

FEDERAL MARITIME COMMISSION
UNITED STATES OF AMERICA

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARCHIE PELTZMAN
Petitioner, Pro Se,
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Brooklyn, N.Y. 11214

QUESTIONS PRESENTED

1. Whether the Court of Appeals decision granting a motion for summary affirmance by the Federal Maritime Commission, without submission of a brief by the Commission, or oral argument, and by a two Judge panel, one Judge not participating, violated petitioner's procedural rights under the Administrative Procedure Act, the Federal Rules of Appellate Procedure, and was arbitrary, capricious, an abuse of discretion, and not in accordance with the law as interpreted by this Court's decision in Federal Maritime Commission V. Pacific Maritime Association, 435 US 40, 1978?

2. Whether the Federal Maritime Commission has jurisdiction to investigate a sworn complaint that statutory rights and constitutional rights of seamen applicants for employment have been violated by an illegal pre-hire exclusive preferential hiring-hall referral bargaining agreement in the maritime industry which negate those rights?

QUESTIONS PRESENTED

3. Whether an exclusive, preferential, or cooperative working arrangement in a bargaining agreement, violates the public policy of the Shipping Act 1916 as amended, and is a per se violation of Title Vl of the Civil Rights Act of 1964, which prohibits discrimination in employment on subsidized United States Merchant Marine vessels?

Parties to The Proceeding In The Court Of Appeals Are:

Federal Maritime Commission

United States of America

Intervenors Are:

Maritime Service Committee, et al.,

Central Gulf Lines,

American Maritime Association,

Pacific Maritime Association,

National Maritime Union of America.

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FEDERAL MARITIME COMMISSION
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PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, Archie Peltzman, pro se, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit, and to review the decision of the Federal Maritime Commission.

OPINIONS BELOW

The per curiam order of the Court of Appeals granting the Federal Maritime Commission (FMC) motion for summary affirmance *(App A, p. 1a-2a), the order denying rehearing (App B, p. 3a), the order denying rehearing en banc (App c, p. 4a), are attached. Petitioner has no knowledge whether these orders have been reported.

The decision of the Administrative Law Judge (ALJ) dismissing petitioner's complaint (App D, p. 5a-22a), The Commission's order adopting (ALJ's) dismissal of complaint as modified and clarified in its opinion (App E, p. 23a-35a) are attached. The (ALJ's) order of dismissal appears in Shipping Regulation Reports at 20 SRR 939; The Commission's order of adoption appears at 20 SRR 1479. The decisions have not yet appeared in the (FMC's) bound volumes.

*App. A,B,C,D,E are references to attached Court orders, and Federal Maritime Commission decisions in the petition.

JURISDICTION

The decision of the Court of Appeals was rendered on March 29, 1982. A timely petition for rehearing and rehearing en-banc was filed on April 19, 1982. This was denied on May 19, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1), within 90 days of that date.

STATUTORY PROVISIONS INVOLVED

1. Sec. 15, Shipping Act, 1916, 39 Stat 728, as amended 46 U.S.C. 801 et seq. Relevant portion attached, (App F. 36a).

2. Title VI of the Civil Rights Act of 1964, (P.L. 88-3521).

3. Sherman Anti-Trust Act Sec 1 et seq.

STATEMENT OF THE CASE

A. Complaint allegations:

1. Petitioner Archie Peltzman, a merchant seaman radio officer filed a sworn complaint *(JA 6-21) before the Federal Maritime

*JA refers to Joint Appendix in the Court of Appeals.

Commission (FMC) on July 29, 1980 alleging violations of the Shipping Act 1916 against Pacific Maritime Association (PMA), American Maritime Association (AMA), independent shipping companies and various seamen unions (JA 14-21) lists the companies and unions.

2. In essence petitioner alleged that the multi-employer bargaining agreements violated the Shipping Act because the exclusive preferential hiring hall clause restricts access to seamen jobs to union members only, and in effect was a "closed shop" pre-hire agreement, illegal under the Taft-Hartley Act, and the Shipping Act. (JA 10,11,12).

3. Petitioner also alleged(JA 8) that the two seamen's unions representing Marine Radio Officers, American Radio Association (ARA), and Radio Officers Union (ROU) represented over ninety percent of the seamen in the industry, thereby controlling the entrance and tenure of employment in the trade by the restrictive "closed shop" agreements.

4. Petitioner alleged that the *Maritime Administration had made subsidy payments to various subsidized shipping companies, and the unions who had been unjustly enriched to the detriment of petitioner, and other seamen similarly situated in violation of the Shipping Act. (JA 12).

B. Administrative Law Judge decision dismissing petitioner's complaint:

1. "The complaint of Mr. Archie Peltzman fails to state a cause of action upon which relief can be granted and is time barred. The complaint is dismissed". (App 22a)

2. In an eighteen page decision the A.L.J. decided that the Commission had no jurisdiction over labor related agreements

*In petitioner's Brief in the Court of Appeals is the argument that Title VI of the Civil Rights Act of 1964 forbids discrimination in employment by subsidized shipping companies. (p. 7)

which establish membership as a condition precedent to employment as a Radio Officer in the industry. (App 15a)

3. The "labor exemption" criteria in United Stevedoring Corp. v. Boston Shipping Assoc. 16 F.M.C. 7, 1972 is cited as a solution to this Court's decision in Volkswagenwerk Aktiengesellschaft v. Marine Terminals, 9 F.M.C. 77 relating to the Commissions problem of "reconciling or accomodating shipping act policies with labor act policies." (App 17a)

4. The A.L.J. says "application of these criteria to the agreements Mr. Peltzman says violate the Shipping Act clearly demonstrates that the agreements come under the labor exemption, and thus are immune from the challenge under the Shipping Act". (App. 18a).

C. Federal Maritime Commission's Order Adopting Dismissal of Complaint :

1. The Commission adopted the A.L.J.'s dismissal of complaint with two exceptions. First was that Sec 16 does reach actions that are "labor exempt," and secondly that the two year statute of limitations only applies to claims for reparations, and does not act as a bar to requests for other relief. But the Commission said "this fact is not significant here because complainant has not otherwise stated a claim upon which relief can be granted." (App 34a)

2. The authority cited for the exception to the A.L.J's decision is Federal Maritime Commission v. Pacific Maritime Ass'n 435 U.S. 40, 1978. (app 34a)

3. The Commission refers to petitioner's complaint of exclusive pre-hire hiring-hall arrangements; and says

"Complainant's grievance therefore addresses pure employer-employee union matters which are not cognizable under the Shipping Act. n 8. (Such matters appear to fall within the province of the National Labor Relations Act). See New York Shipping Association, Inc. v. Federal Maritime Commission, 495 F2d 1215, (2d Cir.) Cert den. 419 U.S. 964, (1974). cf FMC v. PMA, 435 U.S. 40, 1978. n 9. (In PMA, the Supreme Court recognized that collective bargaining agreements could be subject to Section 15 of the Shipping Act and found such an agreement so subject when it imposed terms relating to employer competitition in providing transportation related services upon employers not members of a multi-employer bargaining unit"). (App 31a)

D. Decision of Court of Appeals Granting Summary Affirmance Motion by the Federal Maritime Commission Dismissing Petitioner's Complaint:

1. The Court of Appeals, in a per curiam order, one judge not participating, granted summary affirmance of the Commission's decision, but overuled the Commission on the interpretation of Sec 16, & 17, of the Act, in effect upholding the decision of the Administrative Law Judge. (App 1-2a).

2. Petitioner filed his brief on 11-30-81 three days after the Commission's motion for summary affirmance. On 12-02-81 the Commission filed a motion to suspend briefing pending ruling on their motion for summary affirmance. On that same day petitioner filed the Joint appendix. On 12-16-81 the Court granted FMC's motion to suspend briefing, and time for filing respondents brief pending Courts disposition of the motion for summary affirmance.

REASONS FOR GRANTING THE WRIT

1. The decision affects employment access, and tenure in the entire maritime industry operating under an illegal pre-hire, closed shop, exclusive hiring-hall referral bargaining agreement violative of the Shipping Act 1916 as amended.

a. See 84 West Va. L.R. 31, 1979. "Application Of A Constitutionally Based Duty of Fair Representation to Union Hiring Halls."

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Pages 45-52 contains methods of hiring hall operations and its history. Hiring hall abuses are on p 52-62. On p 55 is cited n 125 United States Civil Rights Commission Report on discriminatory practices by referral unions, 1976, reprinted in A. Smith, "Employment Discrimination Law," 844, 1978.

b. Pre-hire cases are cited in petitioner's brief in the Court of Appeals, p 17-18. Longshoremen v. Marine Engineers, S/S Ultramar, & S/S Ultrasea, 65 Labor Arbitration cases 130,January 2, 1975. Longshoremen v. Marine Engineers, S/S Notre Dame Victory, 65 Labor Arbitration cases 136, January 2, 1975. In the S/S Ultramar & S/S Ultrases cases built with subsidy construction funds, the two officer's unions Masters Mates and Pilots, and National Marine Engineers Beneficial Association complained to the AFL-CIO arbitrator that each had legitimate

reasons to man the new ships.

The arbitrator said MEBA did not violate Sec 20 (of AFL-CIO Constitution.) He said:

> It is wall recognized by now that both affilliates and ship owners, who have been in business for years, make their arrangements to man their licensed officers prior to the actual operations or launching of the vessels involved.

Petitioner argues that Title VI of the Civil Rights Act of 1964, prohibiting employment discrimination in subsidized shipping companies having contracts with the Dep't. of Commerce was violated by these pre-hire agreements, illegal under the National Labor Relations Act,presidential executive orders, and Equal Employment Opportunity Act since non-union graduates of Government subsidized academy schools had no opportunity to apply for these positions.

c. In the C/S Notre Dame Victory case, the arbitrator found for MEBA, and said pre-

hire agreements for non-supervisory employees should get Art. 20 (AFL-CIO Constitution) protection and cites ILA-SIU & MM&P Tugboat Inc., 65 LA 63 case no 74-34, January 2, 1975.

11. The decision affects basic fundamental human rights guaranteed by statutory, constitutional, and international treaties which are violated by the multi-employer agreements complained of in the sworn complaint to the Federal Maritime Commission.

a. Twenty states have Right to Work laws which ban compulsory unionism.

The first amendment to the U.S. Constitution protects freedom to join or refraiming from joining a union or association, See Art. 20 of United Nations "Universal Declaration of Human Rights."

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

b. Petitioner cited in his petition for rehearing in banc (p 9) the case of Young, James and Webster v. United Kingdom, 4 E.H.R.R. (Europeam Human Rights Reports) decided June 26, 1981 - held eighteen votes to three that there had been a breach of Art. 11 of the convention. The case concerned a union closed shop agreement - dismissal of existing employees - freedom of association - liability of the state.

Five judges in a concurring opinion said:

> The mere fact of being obliged to give the reasons for one's refusal to join an association constitutes a violation of the freedom of association.

(Concurring opinion p 59 infra.)

The goverment conceded that, should the dismissal of the applicants constitute an interference with their right of freedomof association under Article 11 of the Convention which was attributable to domestic legislation, The United Kingdon

would be responsible by reason of having enacted such legislation. (p 38)

111. The decision by the Court of Appeals and the Federal Maritime Commission, have both departed from the accepted and usual course of judicial and administrative procedural guarantees as to call for exercise of this Courts power of supervision.

1. A summary affirmance motion by the Commission to dismiss petitioner's complaint and the dismissal by a two Judge panel without an oral hearing or briefs from the Commission was a violation of theCourts own rules, and the Federal Rules of Appellate Procedure.

2. Petitioner argued in his petition for rehearing in banc that Rule 11 of the Court prohibited disposition of the appeal, without oral hearing, and that a determination by a three judge panel must be unanimous if the appeal is frivolous and (a)

REASONS FOR GRANTING THE WRIT

Dispositive issues or set of issues has been recently authoritavely decided, and (b) facts and legal arguments are adequately presented in briefs and records, and oral argument would not significantly aid the Court.

3. Petitioner argued that his appeal could not be regarded as frivolous since it involves fundamental constitutional issues of basic human rights of access to employment that effect employment in the entire United States Merchant Marine.

4. In this Court petitioner argues that Kempf v. Estelle, 606 F2d 518 (CA 5, 1979) holds that a "Motion to dismiss Appeal" which did not address any procedural deficiency in the appeal but rather addressed the merits of the appellant's claim, would be denied. The merits of an appeal are to be presented to the Courts by briefs filed in accordance with the provisions of App-

ellate Rule 28, not by motion under Appellate Rule 27.

5. A recent decision by this Court docket nr 80-6845, Boag v. MacDougall, 50 LW 3539, January 12, 1982, holding that on the basis of the record before us, "We cannot find a sufficient ground for affirming the dismissal of the complaint." That case concerned a prisoner's pro se's complaint and this Court said that it should be construed liberally.

Petitioner argues that his complaint and pleadings before the Commission was not investigated, and relevant pleadings, and his brief in Court of Appeals was also not judicially noted. This Court by reading the order of the Court could not tell even if the Court had seen the record in the Commission. (App 1a)

6. Petitioner argues that in his petition for reconsideration addressed to the Admin-

istrative Law Judge, dated March 30, 1981 (JA 103-112) which the Commission treated as an appeal, and in various other pleadings on December 5, 1980, (JA 73-78), January20, 1981 (JA 81-84), petitioner argued (Dec. 5) that the responsibility of the Commission was to protect the public interest which may be adversely affected by all forms of anti-competitive agreements.

Petitioner argued (Jan. 20) that a report to the President by the Maritime Labor Board from July 8,1938 to June 30, 1941 contained a table showing under the heading of "closed shop" 10 cases involving 8,519 workers, Under preferential hiring there were 10 cases involving 25,815 employees.

Petitioner in his complaint (JA 12), contended that these "closed shop" violations were violative of the public policy of the Shipping Act, and the Norris Laquardia Act.

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7. The Administrative Law Judge (ALJ) said in his decision (App 19), that "closed shop" or union security clauses are proper union concerns and are primarily, and commonly associated with a bona fide labor purpose."

The Commission did not correct this (ALJ) reference to "closed shop" bona fide labor purpose, and did not mention in its decision the January 20, 1981 pleading (JA 81-84) of the Maritime Labor Board's report to the President re "closed shops,"(1938 to 1941).

8. Petitioner argues that the Court of Appeals per curiam order (App 1a), dismissed the complaint without discussing any pleadings in the case, or the reasons for the decision except for a citation of one case, United Stevedoring Corp. v. Boston Shipping Assn, 16 F.M.C., 1972.

This in effect was a refusal by the Court to adhere to the leading decisions of this Court, Federal Maritime Commission v. Pacific Maritime Association, 435 U.S. 40, 1978. Volkswagenwerk Aktsengesellschaft v. F.M.C., 390 U.S. 261, 1968, and F.M.C. v. Aktiebolaget Svenska Amerika Linen (Swedish Am. Line), 390 U.S. 238, 1971, which are dispositive of the questions as to the jurisdiction of the F.M.C. in the Shipping Act, 1916 as amended regarding filing of agreements before the Commission. i.e. agreements that are anti-competive, detrimental to the Commerce of the United States and violative of the Public Policy of the Act.

9. Finally, petitioner argues that the illegal agreements complained of have been the reason for the decline of the Merchant Marine, and shortage of seamen in time of need for defense, and has added to the sub-

sidy costs of the government by inflated manning scales, and other restrictive practices in the agreements. See Federal Maritime Commissioner Leslie Kanuk's *speech before the port of Baltimore Propeller Club. Dr. Kanuk criticized "each institutional segment" of the Maritime community for its "selfcenteredness, its lack of vision, and its refusal to compromise for the broader good, for the public good."

Commissioner Kanuk cited Rep. Paul N. McCloskey (R-Calif.) remarks regarding manning levels in the Merchant Marine, "Mr. McCloskey often cites the fact that when Pacific Far East Line went bankrupt, it was operating ships with 40-man crews, while

*Reported in the maritime trade periodical American Shipper, July 1, 1980, p 38.

REASONS FOR GRANTING THE WRIT

Delta Steamship Lines operated the same (type) ships with 32-man crews. Of course the Coast Guard safety standard for the same ship was 22 men. With no check on manning scales under ODS, the cost of any inflated scales would be borne not by management, but by the American public."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Archie Peltzman

Dated: July 18,1982 Archie Peltzman, pro se